THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18865 of 2006

Dated: 25-09-2006

Between:

Borra Venkata Kondala Rao.

..... PETITIONER

AND

The District Collector, Kakinada, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.18865 of 2006

ORDER:

The petitioner is a resident of Moolapeta, U. Kothapalli Mandal in East Godavari District. Statedly he is the owner of land admeasuring Acs.1.70 cents in survey No.53 of said village. It is also alleged that an extent of Ac.0.30 cents was acquired by the Government in 1986 for the purpose of laying road under Award No.14 of 1986 dated 20-09-1986. Subsequent thereto, the petitioner is allegedly in possession of other extent of land. It is stated that respondent Nos.2 and 3 claim that the land is grama kantam land (village site poramboke land) and proposed to issue pattas under the Integrated Novel Development In Rural Areas and Model Municipal Areas (INDIRAMMA) Scheme and in that direction they also issued flags. Therefore, the petitioner filed instant writ petition seeking a direction to the respondents to stop all further proceedings with regard to the land of the petitioner.

The matter was initially heard at the preliminary stage on 15-09-2006 and was adjourned twice to enable the learned Assistant Government Pleader for Revenue (General) to get instructions in the matter. Today, after getting instructions, the learned Assistant Government Pleader submits that the land in survey No.53 is a part of the land classified as grama kantam land which vests in the Government. The Mandal Revenue Officer (MRO) only displayed that land is earmarked for providing houses sites and as on today, there is no provision as such for providing house sites under INDIRAMMA scheme.

The learned counsel for the petitioner strenuously contends that even if the subject land is grama kantam land, in the absence of notification under Section 58(2) of the Andhra Pradesh Panchayat Raj Act, 1994 (the Act, for brevity), the same cannot be divested from the Gram Panchayat, which has control over the land. Secondly she submits that the ownership of the petitioner is evidenced by the registered gift deeds executed by his two sisters in respect of the part of the land and therefore, the subject land vests in the petitioner.

A bare perusal of Section 58 of the Act would show that grazing grounds, threshing floors, burning and burial grounds, cattle stands, carts tanks and topes at the disposal of the Government vests in the Gram Panchayat. If the Government requires these lands for any specific

purpose, Sub-Section (2) of Section 58 of the Act requires the Government to direct that the poramboke land referred to hereinabove is mentioned in Section 58(1) of the Act and shall cease to vest in the Gram Panchayat. When only specific items of land find place in Sub-Section (1) of Section 58 of the Act, it is not possible to enlarge these items by including the Government land classified as grama kantam land. Learned counsel for petitioner placed reliance on judgment of this Court in **Sarpanch, Polakala Gram Panchayat, Irala Mandal, Chittoor District v. District Collector, Chittoor and others**[1]. The judgment appears to have been rendered *per incuriam* without noticing Sub-Section (1) of Section 58 of the Act and there is no discussion or reference to any precedent. Therefore, the judgment being *subsilentio* is not binding precedent. Secondly under paras 2 and 3 to BSO 15 of the Andhra Pradesh Board of Revenue Standing Orders, village site poramboke land (grama natham area/ grama kantam land) always vests in the Government and is intended for being allotted as house sites in future. If the petitioner claims ownership by reason of the registered sale deed dated 17-04-1976 in the name of his father or the two registered gift deeds dated

02-07-1983, it is always open to him to establish his title in a duly constituted suit before the Civil Court. In this writ petition, the question of title cannot be gone into.

The writ petition is, therefore, dismissed. No costs.

(**V.V.S.RAO, J**)

25th September, 2006
ghn

[1] 1997(2) ALT 486